

1 JAMES E. TORGERSON (Alaska Bar No. 8509120)
2 YVONNE LAMOUREUX (Alaska Bar No. 0512124)
3 HELLER EHRMAN LLP
4 510 L Street, Suite 500
5 Anchorage, AK 99501-1959
6 Telephone: (907) 277-1900
7 Facsimile: (907) 277-1920
8 Jim.torgerson@hellerehrman.com
9 Yvonne.lamoureux@hellerehrman.com

10 Attorneys for Intervenor-Defendant
11 NANA REGIONAL CORPORATION

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

11 ENOCH ADAMS, JR., LEROY ADAMS,
12 ANDREW KOENIG, JERRY NORTON,
13 DAVID SWAN and JOSEPH SWAN,

14 Plaintiffs,

15 v.

16 TECK COMINCO ALASKA
17 INCORPORATED,

18 Defendant,

19 NANA REGIONAL CORPORATION, and
20 NORTHWEST ARCTIC BOROUGH,

21 Intervenor-Defendants.

Case No.: A:04-cv-0049 (JWS)

**DECLARATION OF JOSEPH
DIEHL IN SUPPORT OF REPLY
TO MOTION TO STRIKE
PLAINTIFFS' NEW EXPERT
REPORTS**

22 I, Joseph Diehl, make my sworn declaration as follows:

23 1. I have personal knowledge of and am competent to testify to all
24 facts set forth in this declaration.

25 2. I am an Environmental Coordinator at the Red Dog Mine for Teck
26 Cominco Alaska Incorporated (Teck Cominco).

27 3. One of my current duties is to maintain Teck Cominco's
28 environmental sample database.

Heller Ehrman LLP
510 L STREET, SUITE 500
ANCHORAGE, AK 99501-1959
TELEPHONE (907) 277-1900

1 4. I have reviewed the spreadsheets marked as Plaintiffs' Exhibits 71
2 and 72. The spreadsheets reflect data from a Teck Cominco Alaska, Inc.
3 environmental sample database I maintain (Database).

4 5. The Database is called Envista. It is a front end interface for an
5 Oracle database. It has a scheduling function that allows us to schedule samples and
6 required parameters. Samples collected are logged into the database. The database
7 will then generate a chain of custody and request for analyses form. When the
8 laboratory reports results, we can either import these results using the importing
9 function that works well for multiple parameters, or we can manually enter results.
10 Typically bioassays, including ceriodaphnia toxicity, are entered manually and
11 inorganic results, including cyanide and TDS, are imported. My duties include
12 inputting that data and supervising others who input such data into the Database. In
13 the course of my duties, I also from time to time prepare spreadsheets like those
14 marked as Plaintiffs' Exhibits 71 and 72 based on data in the Database.

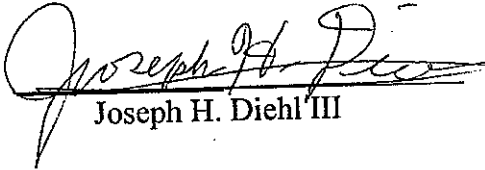
15 6. I have reviewed the Declaration of Rachel Davis in Support of
16 Reply to Motion to Strike Plaintiffs' Expert Reports, including Attachments A and B
17 to the Declaration.

18 7. In the usual course of Teck Cominco's business, the information in
19 most of the documents listed in Attachment A was input into the Database. We
20 began using Envista in 2000 and lab reports prior to using Envista were imported by
21 consultants helping us bring Envista online. The information in the Database is also
22 used to create the DMRs listed in Attachment B.

23 8. Based on my review of Attachments A and B and Plaintiffs'
24 Exhibits 71 and 72, I believe all the data in Plaintiffs' Exhibits 71 and 72 relevant to
25 (1) cyanide values for May 1999 through August 2003, (2) ceriodaphnia toxicity
26 levels for May 2000 through October 2002, and (3) Outfall 001 TDS concentrations
27 for May 1999 through August 2003 was included in either the lab reports and results
28 listed in Attachment A, or the DMRs listed in Attachment B, or both.

**DECLARATION OF JOSEPH DIEHL IN SUPPORT OF REPLY TO MOTION TO STRIKE
PLAINTIFFS' NEW EXPERT REPORTS
ENOCH ADAMS V. TECK COMINCO ALASKA INCORPORATED, CASE NO.: A:04-CV-0049 (JWS)
PAGE 2 OF 3**

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 29 day of February, 2008, at Vancouver, Washington.


Joseph H. Diehl III

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing DECLARATION OF JOSEPH DIEHL IN SUPPORT OF REPLY TO MOTION TO STRIKE PLAINTIFFS' NEW EXPERT REPORTS was served via the method indicated below this 29th day of February, 2008, on the following parties:

Luke W. Cole Counsel for Plaintiffs
Center on Race, Poverty & the Environment
47 Kearny Street, Suite 804 Served via: Electronic transmission
San Francisco, CA 94108
luke@igc.org

Nancy S. Wainwright Counsel for Plaintiffs
Law Offices of Nancy S. Wainwright
13030 Back Road, Suite 555 Served via: U.S. Mail only
Anchorage, AK 99515-3538

Sean Halloran Counsel for Defendant Teck Cominco
Hartig Rhodes Hoge & Lekisch, P.C. Served via: Electronic transmission
717 K Street
Anchorage, AK 99501
sean.halloran@hartig.com

David S. Case Counsel for Intervenor-Defendant
Landye Bennett Blumstein LLP Northwest Arctic Borough
701 West 8th Avenue, Suite 1200
Anchorage, AK 99501 Served via: Electronic transmission
dcase@lbbblawyers.com

/s/ James E. Torgerson

JAMES E. TORGERSON (BAR NO. 8509120)
YVONNE LAMOUREUX (BAR NO. 0512124)
HELLER EHRMAN LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: 907-277-1900
Jim.torgerson@hellerehrman.com
Yvonne.lamoureux@hellerehrman.com

DECLARATION OF JOSEPH DIEHL IN SUPPORT OF REPLY TO MOTION TO STRIKE PLAINTIFFS' NEW EXPERT REPORTS
ENOCH ADAMS V. TECK COMINCO ALASKA INCORPORATED, CASE NO.: A:04-CV-0049 (JWS)
PAGE 3 OF 3

Heller Ehrman LLP
510 L STREET, SUITE 500
ANCHORAGE, AK 99501-1959
TELEPHONE (907) 277-1900